

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

15

DECISION

TOPIC

**Notice of Intended Action - Chapter 34: Administrative amendments to the
Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule
(CAMR) provisions**

The Department is requesting permission of the Commission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 34, "Provisions for Air Quality Emissions Trading Programs," of the 567 Iowa Administrative Code (IAC).

The purpose of the proposed rule changes is to make administrative amendments to the state states rules for the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR).

The Commission approved final adoption of the rules for the CAIR and CAMR programs on May 15, 2006. The final rules were published in the IAC on June 7, 2006. After the Department adopted the final rules and submitted the rules to the Environmental Protection Agency (EPA) Region VII for approval into Iowa's State Implementation Plan (SIP), EPA identified an issue that required administrative amendments to Iowa's rules and to other states' rules.

The current definitions identify the Department as the permitting authority. The CAIR and CAMR programs are unique in that they allow for trading and holding of emissions allowances that may have been originally allocated by another "permitting authority," such as EPA or another state agency. To account for this, EPA requested that the Department modify the definitions of "permitting authority" contained in the IAC for purposes of CAIR and CAMR allocations by adopting the definition in the federal regulations. EPA made a written request for the changes to the Department on February 16, 2007. EPA then followed this letter with an e-mail, dated April 10, 2007, requesting that the Department commit to a schedule allowing for final rule adoption by January 2008. This timeline is necessary so that the rule changes are in place before any trading commences under the CAIR program, which could occur as early as January 2008. These changes are administrative, non-controversial changes that will result in a benefit to CAIR and CAMR affected units.

If the Commission approves this Notice of Intended Action, the Department will hold a public hearing on Tuesday, September 4 at 9 AM at the Department's Air Quality Bureau offices. The public comment period on the proposed rules will close on Wednesday, September 5.

An administrative rule fiscal impact statement is attached.

Christine Paulson
Environmental Specialist Senior
Program Development Section, Air Quality Bureau
Memo date: June 11, 2007

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

The final rules for the Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule (CAMR) were published in Chapter 34 of the Iowa Administrative Code on June 7, 2006. After the Department adopted the final rules and submitted the rules to the Environmental Protection Agency (EPA) Region VII for approval into Iowa's State Implementation Plan (SIP), EPA identified an issue that required administrative amendments to Iowa's rules and to other states' rules.

The current definitions identify that the Department is the permitting authority. The CAIR and CAMR programs are unique in that they allow for trading and holding of emissions allowances that may have been originally allocated by another "permitting authority," such as EPA or another state agency. To account for this, EPA requested that the Department modify the definitions of "permitting authority" contained in the Iowa Administrative Code for purposes of CAIR and CAMR allocations by adopting the definition in the federal regulations. EPA made a written request for the changes to the Department on February 16, 2007. EPA then followed this letter with an e-mail, dated April 10, 2007, requesting that the Department commit to a schedule allowing for final rule adoption by January 2008. This timeline is necessary so that the rule changes are in place before any trading commences under the CAIR program, which could occur as early as January 2008.

Item 1 amends rule 567—34.201(455B) to specify that the definition of "permitting authority" shall mean the definition contained in 40 CFR 96.102 for purposes of its use in the definitions of "allocate or allocation," or "CAIR NO_x allowance," also set forth in 40 CFR 96.102, and shall mean the Iowa Department of Natural Resources in all other references.

Item 2 amends rule 567—34.210(455B) to specify that the definition of "permitting authority" shall mean the definition contained in 40 CFR 96.202 for purposes of its use in the definitions of "allocate or allocation," or "CAIR SO₂ allowance," also set forth in 40 CFR 96.202, and shall mean the Iowa Department of Natural Resources in all other references.

Item 3 amends rule 567—34.221(455B) to specify that the definition of "permitting authority" shall mean the definition contained in 40 CFR 96.302 for purposes of its use in the definitions of "allocate or allocation," or "CAIR NO_x ozone season allowance," also set forth in 40 CFR 96.302, and shall mean the Iowa Department of Natural Resources in all other references.

Item 4 amends rule 567—34.301(455B) to specify that the definition of "permitting authority" shall mean the definition contained in 40 CFR 60.4102 for purposes of its use in the definitions of "allocate or allocation," or "Hg allowance," also set forth in 40 CFR 60.4102, and shall mean the Iowa Department of Natural Resources in all other references.

Any person may make written suggestions or comments on the proposed amendments on or before September 5, 2007. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; or by electronic mail to christine.paulson@dnr.state.ia.us.

A public hearing will be held on Tuesday, September 4, 2007, at 9:00 a.m. in the conference rooms at the Department's Air Quality Bureau located at 7900 Hickman Road,

Urbandale, Iowa. Comments may be submitted orally or in writing at the public hearing. All comments must be received no later than September 5, 2007.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Christine Paulson at (515) 242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend rule 567—34.201 (455B) as follows:

567—34.201 (455B) CAIR NO_x annual trading program general provisions. The provisions in 40 CFR Part 96, Subpart AA (96.101 through 96.108) , as amended through April 26, 2006, are adopted by reference, except that the definition of "permitting authority" in 96.102 shall ~~mean the department of natural resources~~ have the meaning set forth in 96.102 for purposes of its use only in the definitions of "allocate or allocation" or "CAIR NO_x allowance," also set forth in 96.102, and shall mean the department of natural resources in all other references contained in rules 567—34.200(455B) through 567—34.209(455B). Other terms contained in rules 567—34.200(455B) through 567—34.209(455B), and in Tables 1A and 1B, shall have the meanings set forth in 96.102.

ITEM 2. Amend rule 567—34.210(455B) as follows:

567—34.210(455B) CAIR SO₂ trading program. The provisions in 40 CFR Part 96, Subparts AAA through III, as amended through April 26, 2006, are adopted by reference, except that the definition of "permitting authority" in 96.202 shall ~~mean the department of natural resources~~ have the meaning set forth in 96.202 for purposes of its use only in the definitions of

"allocate or allocation" or "CAIR SO₂ allowance," also set forth in 96.202, and shall mean the department of natural resources in all other references contained in rule 567—34.210(455B).

ITEM 3. Amend rule 567—34.221 (455B) as follows:

567—34.221 (455B) CAIR NO_x ozone season trading program general provisions.

The provisions in 40 CFR Part 96, Subpart AAAA (96.301 through 96.308), as amended through April 26, 2006, are adopted by reference, except that the definition of "permitting authority" in 96.302, , except that the definition of "permitting authority" in 96.302 shall ~~mean the department of natural resources~~ have the meaning set forth in 96.302 for purposes of its use only in the definitions of "allocate or allocation" or "CAIR NO_x ozone season allowance," also set forth in 96.302, and shall mean the department of natural resources in all other references contained in rules 567—34.221(455B) through 567—34.229(455B). Other terms contained in rules 567—34.221(455B) through 567—34.229(455B), and in Tables 2A and 2B, shall have the meanings set forth in 96.302.

ITEM 4. Amend rule as 567—34.301 (455B) follows:

567—34.301 (455B) Mercury (Hg) budget trading program general provisions. The provisions in 40 CFR 60.4101 through 60.4108, as amended through June 9, 2006, are adopted by reference, except that the definition of "permitting authority" in 60.4102 shall ~~mean the department of natural resources~~ have the meaning set forth in 60.4102 for purposes of its use only in the definitions of "allocate or allocation" or "Hg allowance," also set forth in 60.4102, and shall mean the department of natural resources in all other references contained in rules 567—34.301(455B) through 567—34.308(455B). Other terms contained in rules 567—34.301(455B) through 567—34.308(455B), and in Tables 3A and 3B, shall have the meanings set forth in 60.4102.

Date

Richard A. Leopold, Director

Administrative Rule Fiscal Impact Statement

Date: June 4, 2007

Agency: Department of Natural Resources

IAC Citation: 567 IAC Chapter 34 (455B).

Agency Contact: Anne Preziosi

Summary of the Rule: EPA identified that changes needed to be made to the state definitions for "permitting authority" to allow for interstate trading of emissions allocations after Department adoption of final rules for the Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule (CAMR) programs. The proposed rules will make administrative changes to the definition of "permitting authority" in the state rules for the provisions of the CAIR and the CAMR programs. These administrative changes will ensure that owners and operators of electrical generating units in Iowa can trade emissions allocations freely under the EPA-administered emissions trading programs for CAIR and CAMR.

Fill in this box if the impact meets these criteria:

- ☒ No Fiscal Impact to the State.
☐ Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.
☐ Fiscal Impact cannot be determined.

Brief Explanation:

The Department expects to implement the administrative changes to the CAIR and CAMR provisions through existing revenues.

Fill in the form below if the impact does not fit the criteria above:

☐ Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY)</u>	<u>Year 2 (FY)</u>
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL REVENUE	_____	_____
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL EXPENDITURES	_____	_____
NET IMPACT		

 x This rule is required by State law or Federal mandate.

Please identify the state or federal law:

These rules implement Clean Air Act Section 110 and 111, as codified in 40 Code of Federal Regulations (CFR) Parts 51, 60, 72, 73, 74, 75, 77, 78 and 96.

 Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

 x Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

The proposed rule changes will not affect expenditures or revenues to the state.

Fiscal impact to persons affected by the rule:

The proposed rule changes will impact owners and operators of Electrical Generating Units (EGUs) only. The proposed rules will benefit owners or operators of CAIR and CAMR affected EGUs because they will allow free trading of emissions allowances under the EPA-administered emissions trading programs. If the state does not adopt these rule changes by January 2008, it is possible that some Iowa EGU owners or operators would not be able to hold or trade emissions allowances under CAIR or CAMR that originated in other states. The proposed rule changes allow free trading of emissions allowances across state boundaries, which was EPA's intent for these cap and trade programs.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

The proposed rule changes will impact municipalities with EGUs in the same manner as is described above for other owners or operators of EGUs. The rule changes will be a benefit to municipalities with CAIR or CAMR affected EGUs.

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Christine Paulson
Telephone Number: 242-5154